

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KATERINA EDNA HOSEY,

Defendant-Appellant.

UNPUBLISHED

May 15, 2014

No. 314957

Eaton Circuit Court

LC No. 12-020167-FH

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Defendant appeals her jury trial conviction for possession of methamphetamine under MCL 333.7403(2)(b)(i). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

On May 23, 2012, defendant and a friend were fishing on Narrow Lake in the early morning hours. Two Michigan State Police troopers, who were patrolling the area, saw defendant and her companion sitting on the dock. They asked both individuals to produce their fishing licenses, which defendant's friend did. Defendant stated that her fishing license was in her purse, and one of the officers escorted defendant off the dock so that she could look through her purse on shore. As she continued the search, one of the troopers observed defendant remove an object from her purse and put it in her pocket. When asked to remove her hand from her pocket, she initially refused, and when she did so, she would not open her hand. A scuffle then ensued, and defendant dropped a black container, which held a substance that defendant admitted was "meth." The troopers then arrested defendant. While in transit to jail, defendant freely stated that the "amount [of meth] was gonna last me two months." She was subsequently charged with methamphetamine possession in violation of MCL 333.7403(2)(b)(i).

At trial, defendant claimed that the methamphetamine was not hers, and had been planted on her by one of the troopers. She asserted that the trooper escorted her off the dock and placed her purse on the hood of her friend's car. According to defendant, the officer went into his car, emerged with the methamphetamine, and tried to force it into her hand. She also alleged that this trooper held a grudge against her because of a complaint she filed against him over a 2009 traffic stop.

The trooper in question rejected defendant's version of events, and testified that he did not plant anything on her. He explained that he asked defendant to step off the dock because of his prior experience with her in the 2009 traffic stop. During the stop, after the officer requested that defendant exit her vehicle, defendant had "a couple of pretend seizures, where she dropped to the ground and kind of flailed around." He also stated that defendant had refused medical assistance. Based on this incident, the trooper emphasized that he escorted defendant off the dock so she would not flail about on the dock and/or fall into the water.¹

Defense counsel objected to the trooper's testimony, for lack of foundation on the officer's medical training. The court sustained the objection, and told defendant it would issue a cautionary instruction on the matter at the conclusion of the trial. It allowed the officer to continue testifying, however. In the subsequent instruction, the trial court struck the term "seizure," but allowed the officer's testimony on defendant's behavior at the 2009 traffic stop, and his opinion that her actions were not the result of a medical condition. As a further caution, the trial court instructed the jury as follows: "[a]t times during trial I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence I let in and nothing else."

The jury convicted defendant of methamphetamine possession in violation of MCL 333.7403(2)(b)(i). Defendant appeals her conviction, and argues that the trial court's admission of the trooper's testimony violated the Michigan Rules of Evidence (MRE) 404 and 701.

II. ANALYSIS²

A. MRE 404

MRE 404(b)(1) governs the admissibility of other crimes, wrongs, or acts, and states, in relevant part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

¹ The officer also testified that he never received a complaint after the 2009 traffic stop, and was not familiar with an alleged copy of the complaint presented to him on cross examination.

² A trial court's decision concerning the admissibility of evidence is reviewed for an abuse of discretion. *People v Farquharson*, 274 Mich App 268, 271; 731 NW2d 797 (2007). An abuse of discretion occurs when the trial court's decision falls outside of the range of principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

Here, defendant argues that the trooper's testimony on the 2009 traffic stop, in which he opined on the authenticity of her supposed medical condition, was improper character evidence under MRE 404(b)(1). Specifically, defendant claims that the prosecution offered evidence of her behavior at the traffic stop to establish that defendant was a liar, and that her testimony was not credible.

As noted, however, the prosecution did not present the trooper's testimony on the 2009 traffic stop to demonstrate that defendant has a propensity to fabricate versions of events that are favorable to her. Instead, the trooper's testimony was used to establish why he remembered defendant, and why he asked her to leave the dock so she could look for her fishing license on shore. Accordingly, the testimony was not offered as character evidence, and MRE 404(b)(1) does not apply.

B. MRE 701

MRE 701, which governs opinion testimony by lay witnesses, reads in full:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding the witness' testimony or the determination of a fact in issue.^[3]

In this case, defendant claims that the trooper's testimony on her alleged medical incident during the 2009 traffic stop was improper lay opinion. But the officer's statements satisfy each condition that MRE 701 requires for admissibility, and thus do not violate the rule. Again, the trooper testified that he had previously seen defendant fall to the ground and flail around, and that he did not find her actions authentic. His statements were based on his first-hand observation of defendant's behavior, as well as defendant's refusal of his offer to provide her with medical assistance. Accordingly, his testimony satisfies MRE 701(a).

As to MRE 701(b), the trooper's knowledge of defendant's history of falling and flailing was relevant to establish why he escorted defendant off the dock and onto shore. This statement rebutted defendant's testimony that he escorted her ashore to retrieve a container of methamphetamine and place it on her person, which made his testimony helpful to determining a fact in issue. Further, his testimony on the authenticity of defendant's actions helped establish why he recognized defendant, and responded to defendant's charge that the trooper only recognized her because of her earlier complaint against him.

III. CONCLUSION

³ Both parties on appeal discuss a third requirement: that the testimony "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." This requirement, however, is drawn from Federal Rule of Evidence 701, and is not part of the corresponding Michigan rule.

Accordingly, the trial court properly held the trooper's testimony admissible, and defendant's appeal is without merit.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ William C. Whitbeck